IN THE CIRCUIT COURT MPRAESO, EASTERN REGION, BEFORE HER HONOUR MRS ADWOA AKYAAMAA OFOSU, CIRCUIT COURT JUDGE ON FRIDAY THE 15TH OF MARCH, 2024

B1/48/2022

THE REPUBLIC

V

1.BOAKYE GYAN

2.ERNEST KUMAH

3.EMMANUEL OSEI

4.EVANS KWEKU ASIRIFI

5.KOFI SARPONG

6.YAW PREKO

……

…….

TIME: 9:25

ACCUSED PERSONS PRESENT

CHIEF INSPECTOR BEATRICE LARBI FOR PROSECUTION PRESENT

BENJAMIN AGYAPONG FOR THE ACCUSED PERSONS ABSENT

JUDGMENT

The accused persons herein were arraigned before this court on 22nd February, 20242 charged with four counts of offences. They were all jointly charged with ***conspiracy to commit crime to wit assault*** contrary to sections 23(1) and 84 of the Criminal Offences Act, 1960 (Act 29) on count one and ***Assault*** contrary to section 84 of the same Act on count two . A3 alone was charged with ***Assault*** contrary to section 84 of Act 29 (supra) on count three whilst A1 and A2 were jointly charged with ***Possession of Fire Arms without Lawful Authority*** contrary to section 11(a) of the **Arms and Ammunitions Act 1962 (NRCD 9).**

When the charges were read to them on their arraignment before the court, they all pleaded not guilty to their respective charges. Their pleas meant that the prosecution that alleges that they have committed those offences has to prove their guilt of in terms of the requirements of the law.

The facts of the case are that the complainant is an electrician and stays at Mpem Quarters near Amartey. A1, A2, A3, A4 and A5 are farmers and A6 is a driver who all reside at at Brifa Onyimso village near Abetifi. A1 to A5 are members of the neighbourhood watch dog committee at Simpoa. On the 19th of February, 2022 at about 5:30am, whilst the complainant was asleep in his room, he heard a bang on his door. His wife opened the door and saw the accused persons dressed in green uniforms with A1 and A2 armed with a single barrel short gun each, standing by the door. They asked of the complainant and when he came out, they told him that the Okwahumanhene summoned him but he refused to honour his call and so he has sent them to bring him. They then got hold of the complaint and put him into their Mitsubishi Pajero vehicle with registration number GR 7222-N driven by A6.

The complainant alleged that A3 pulled him by his attire and pushed him into the vehicle and thereby hurting him on his left diaphragm. They then drove towards Kwahu Tafo enroute Abene. The complainant for fear of his life, called the Kwahu Tafo Police and informed them of his arrest. The Tafo Police after informing the Mpraeso District Police commander, proceeded to Nteso and mounted a road block there. That when the accused persons got to Nteso, the police rescued the complainant and arrested them. The police retrieved two single barrel shotguns from A1 and A2 together with 26 live cartridges. They were handed over to the Mpraeso police. A1 and A2 could not produce any document covering the guns and cartridges. They were charged with the offences per the charge sheet to appear before this court.

Article 19(2)(c) of the **1992 Constitution of the Republic of Ghana** provides that:

"A person charged with a criminal Offence shall be presumed innocent until he is proved or has pleaded guilty".

In proving the guilt of the accused person therefore, it is a settled principle that it is the prosecution that has the burden to do so. The failure to discharge the burden should lead to the acquittal of the accused. The standard of proof placed on the prosecution in order to discharge its burden is 'proof beyond reasonable doubt'. This principle finds expression under section **11(2) of the Evidence Act, 1975 (N.R.C.D. 323)** which provides that:

"In a criminal action, the burden of producing evidence when it is on the prosecution as to any fact which is essential to guilt requires the prosecution to produce sufficient evidence so that on all the evidence a reasonable mind could find the existence of the fact beyond reasonable doubt".

The term "reasonable doubt" as explained by Lord Denning in the case of **Miller vs. Minister of Pensions (1947) 2 All ER 372** is as follows;

"It needs not reach certainty but must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The Law would fail to protect the community if it admitted fanciful positions to deflect the course of justice"

THE PROSECUTION'S CASE

Pursuant to discharging its burden, the prosecution led evidence through three witnesses being William Kofi Nartey the complainant, PW1, Agnes Narkuor PW2 and Detective Sergeant Eric N. Tetteh, the investigator, PW3.

PW1, testified that he stays at Mpem Quarters near Amartey and that on the 19th of February, 2022 at about 5:30am, whilst he was asleep in his room at Mpem quarters with his wife he heard a bang on his door. His wife went to open the door and saw the six accused persons standing at the door. They asked of him and when he came out, he saw the accused persons dressed in green uniforms with accused Boakye Gyan and Ernest Kumah each armed with a single barrel shotgun.

According to PW1, they told him that the Okwauhumanhene sent them to bring him to his palace at Abene for not honouring his invitation. They then got hold of him and put him into their Mitsubishi Pajero vehicle with registration number GR 7222 – N driven by accused Yaw Preko. That in the course of taking him to their vehicle, accused Emmanuel Osei pulled him by his attire and pushed him into the vehicle thereby hurting him on his left diaphragm. They drove towards Kwahu Tafo direction to Abene. He said that for fear of his life, he called the Kwahu Tafo police and informed them about his arrest. The police came and mounted a road block at Kwahu Nteso and when they got there, the

police rescued him and arrested the accused persons. He further testified that the police retrieved the two single barrel shotguns and some live cartridges from them. The police issued a medical report form to him and he attended the Kwahu Government Hospital where he was treated and discharged.

PW2, told the court that PW1 is her husband and they stay at Mpem Quarters near Amartey. She testified that on the 19th of February, 2022 at about 5:30 am whilst she was asleep in their room at Mpem quarters with her husband, she heard a bang on the door. She went to open the door and saw the five accused persons standing at the door dressed in green uniforms. According to her, they asked of her husband and she went to call him. They told him that the Okwahumanhene sent them to bring him to his palace at Abene for not honouring his invitation. He asked them what they do and one of them said they were soldier and pushed him into the vehicles. They then got hold of him and put him into their vehicle being driven by Yaw Preko who was then in the car. PW2 added that in the course of them taking PW1 to their vehicle, Emmanuel Osei pulled him by his attire. She told them to wait for her to call an elder to accompany PW1 but they refused. They then drove towards Kwahu Tafo direction.

PW3, told the court that on the 19th of February, 2022, the Kwahu Tafo police arrested and brought the six accused persons to the DCID Mpraeso together with two single barrel shot guns and 26 live cartridges. They reported that the accused persons went to Mpem quarters to arrest PW1 for not honouring the invitation of the Okwahumanhene. PW1 reported that A3 hurt him on his left diaphragm and so he issued a police medical form to him and he attended the Kwahu Government Hospital for treatment and endorsement.

PW3 further said that he took possession of the shotguns and cartridges and took photographs of them. A1 and A2 who were in possession of the guns were unable to

produce documents covering them but A1 stated that the gun which he possessed belonged to one Nana Baah of Abene but has been in his possession for some time now. A2 also said that the gun belonged to his late father. He took cautioned statements of the accused persons and was later instructed by his District Commander to charge the accused persons so he took charge statements from them. PW3 tendered the cautioned statements of the accused persons marked as Exhibit A, B, C, D, E and F respectively, the charge statements of the accused persons marked as exhibits A1,B1,C1,D1,E1 and F1 respectively, the endorsed medical form of PW1 Exhibit G and the photograph of the two guns and cartridges Exhibit G

At the close of the case for the prosecution, this court differently constituted ruled that there was a case for the accused persons to answer. They were thus called upon to open their defence pursuant to section 174 of the **Criminal and Other Offences (Procedure) Act 1960 (Act 30)**

THE DEFENCE

All the six accused persons including their witness DW1 filed witness statements.

A1 told the court that he is a member of the Abene Sempoa Neighbourhood watchdog committee team and that on the 18th of February, 2022, at about 3:30 to 4:00 pm he received a call from the Okyeamehene of Abene Traditional Council that Dasebre Akuamoah Agyapong II (Kwahumanhene of Abene) has invited PW1 to his palace on several occasions but he has refused to honour his invitation so his team should go and convey him if possible. When they went to PW1's house, they relayed the message to him and he willingly decided to go with them. They waited for him to take his bath and dress up. On

their way, PW1 made a call to the police and informed the Tafo police station officer that they had forcibly come to pick him. When they got to Kwahu Tafo they were stopped by the police and were arrested.

A1 continued that he did not assault PW1, he did not pull or push him and as a matter of fact that is why he was not charged specifically with assault on the charge sheet. He further told the court that he did not have a gun when they went to the complainant's house. When they were arrested, the police picked up the gun from the Mitsubishi Pajero belonging to Nana Baah of Abene. The gun was kept in his car when they were arrested and it is not true that he took the gun to PW1's house as he told the police. That the gun belongs to Nana Baah of Abene who forgot to take it from the car.

A2 testified that he is a member of the Abene Sempoa watchdog committee team. That on the 18th of February, 2022, he received a call from Boakye Gyan (A1) that the Kwahumanhene has invited PW1 to his palace on several occasions but he has refused to honour his invitation so they should go and convey him if possible. They went to PW1's house and relayed the message to him and he willingly decided to go with them and so they waited for him to take his bath and dress up. On their way, PW1 made a phone call and informed the police station officer that they had forcibly come for him. When they got to Tafo they were stopped by the police and they were arrested. He insisted that he did not push or pull the complainant and that is why he was not charged specifically with assault on the charge sheet.

The evidence of A3 to A6 was materially the same as that of A2 save that A3 did not say that he was not specifically charged with assault. I therefore do not deem it necessary to reproduce their evidence in this judgment.

The defence tendered two exhibits marked as exhibit1 and 2 being the endorsed medical form of PW1 and the permit covering the gun that A1 was in possession of.

As aforementioned, all the accused persons are jointly charged with conspiracy to commit crime to wit assault contrary to section 23(1) and 84 of Act 29/60

Section 23 (1) of Act 29 (supra) provides that:

*"Where two or more persons **agree to act** together with a common purpose for or committing or abetting a criminal offence, whether with or without a previous concert or deliberation, each of them commits a conspiracy to commit or abet the criminal offence".*

See: **The Republic v. Augustina Abu and Others, (unreported) Criminal Case No. ACC/15/2013;** per Marful Sau J.A (As he then was)

The above is the new formulation on the law of conspiracy brought about as a result of the work of the Statute Law Revision Commissioner. Thus in the case of **Francis Yirenkyi v the Republic, Criminal Appeal No. J3/7/2015** the Supreme Court observed that under the old formulation the following ingredients of the offence had to be established to secure a conviction:

1. Prior agreement to the commission of a substantive crime, to commit or abet that crime
2. Must be found acting together in the commissioning of a crime in circumstances which show that there was a common criminal purpose
3. That there had been a previous concert even if there was evidence that there was no previous meeting to carry out the criminal conduct

In the new formulation the only ingredient that has been preserved is 'the agreement to act to commit a substantive crime or abet that crime.

The court further noted that the new formulation no doubt reinforces the view that conspiracy is an intentional conduct.

The Supreme Court further noted that the essence of the changes brought about by the work of the Statute Law Review Commissioner is that, under the new formulation, a person could no longer be guilty of conspiracy in the absence of any prior agreement whereas under the old formulation a person could be guilty of conspiracy in the absence of any prior agreement.

In further elaborating on the elements of conspiracy the Supreme Court through Tokornoo JSC (as she then was) in the case of **Richard Kwabena Asiamah v. The Republic [2020] GHASC 137 (4 November, 2020)** cited with approval the elements of conspiracy as outlined by Justice Kyei Baffour JA sitting as additional Justice of the High Court in the case of **The Republic v. Baffoe Bonnie and Others (Suit no. CR/904/2017) (unreported) dated 12th May, 2020** in the following words:

For the prosecution to be deemed to have established a prima facie case, the evidence led without more should prove that:

1. *That there were at least two or more persons*
2. *That there was agreement to act together*
3. *That the sole purpose for the agreement to act together was for a criminal enterprise.*

Furthermore in the case of **Akliku v. The Republic [2017-2018] SCGLR 444 at 451,** the Supreme Court through Appau JSC stated that:

The double edged definition of conspiracy arises from the undeniable fact that it is almost always difficult if not impossible to prove previous agreement or concert in the conspiracy cases. Conspiracy could therefore be inferred from the mere act of having taken part in the crime where the crime was actually committed. Where the conspiracy charge is hinged on an alleged acting

together or in concert, the prosecution is tasked with the duty to prove or establish the role each of the alleged conspirators played in accomplishing the crime

Here, no doubt, the prosecution has named six persons as being involved in the act which satisfies the first element. The evidence is that the accused persons with the exception of A6 are members of the community watchdog committee of Sempoa and that on the material date all the accused persons went to PW1's house on the instruction of the Kwahumanhene to cause the arrest of PW1. Thus right from the outset, even if the accused persons had any agreement on what they were going to do at PW1's house at all, the agreement was for the purpose of going to cause PW1's arrest as instructed by the Kwahumanhene and not to go and commit any offence. This can also be inferred from the evidence that when the accused persons got to PW1's house, they knocked at his door, his wife (PW2) came to open the door and they asked of the accused and PW2 went to call him. There is no evidence of any aggression on the part of the accused persons except for the allegation that A1 and A2 wielded guns but did nothing with it. During cross examination of PW1 the following transpired:

Q: On that date when the incident happened, you would agree with me that the accused persons only came to invite you to the palace of the Kwahumanhene

A: Yes

Q: They waited for you for about 30 minutes for you to prepare your self

A: Yes

From the above excerpts of cross examination, it is clear that the intention of the accused persons was not to go and assault PW1 because if that were so, they would have launched an attack on PW1 as soon as he came out and would not have had the patience to allow him about 30 minutes to go and prepare. This in my view shows that the only reason for

which the accused persons went to PW1's house was to go and invite him to the police station on the instruction of the Kwahumanhene. There is therefore no evidence to suggest that the accused persons did agree together to go to PW1's house to assault him. The charge of conspiracy on count one therefore fails.

For ease of analyses, I will discuss count two and count three together.

All the accused persons were jointly charged with assault on count two and A3 alone was charged with assault on count three. In effect therefore, A3 faces two counts of assault.

It is provided by section 84 of Act 29 (supra) under which the accused persons are charged that:

"a person who unlawfully assaults another person commits a misdemeanour".

Section 85 further provides three forms of assault namely:

- Assault and battery
- Assault without actual battery
- Imprisonment

The charge in the instant case has to do with assault and actual battery which is explained in section 86 of Act 29 supra as:

"a person makes an assault and battery on another person if without the other person's consent and with the intention of causing harm, pain or fear, or annoyance to the other person or of exciting the other person to anger that person forcibly touches the other person

Thus Lane CJ in the case of **Faulkner v. Tolbot [1981] 3 ALL ER 440 CA** held as follows:

"An assault is an intentional touching of another person without the consent of that person and without lawful exercise. It need not necessarily be hostile, or aggressive, as some of the cases seem to indicate."

From the above therefore the elements of assault are:

1. Forcibly touching or causing any person, animal or matter to forcibly touch that person;

2. the touch is without that person's consent;

3. the touch is made with the intention of causing harm, pain, fear or annoyance.

4 the touch was unjustifiable under law

The evidence of PW1 is that the accused persons got hold of him and put him in their Mitsubishi Pajero vehicle driven by A6 and that in the course of taking him to the vehicle, A3 pulled him by his attire and pushed him into the vehicle thereby hurting him on his left diaphragm. Having said this, during cross examination of PW1 he gave a different account of what happened. Here are the relevant excerpts of cross examination of PW1:

Q: None of them harassed you at the time is that not correct?

A: ***It was on that same date that they forcefully dragged me on the ground and pushed me into the car***

Q: In your own witness statement at paragraph 9, the only allegation of assault was with regards to the A3 Emmanuel Osei, is that not correct?

A: No, it is not correct. It was A3 who was in the car who was pulling me into the car, whiles the others were outside and pushing my body into the car

Q: I suggest to you that Emmanuel Osei never pulled you into the car

A: He did. I have testified to what I saw

Q: None of the accused persons dragged you on that date of the incident

A: It is not correct

From the above it is clear that PW1's testimony under cross examination is in conflict with his evidence in chief. The settled law is that a witness whose evidence on oath is contradictory of a previous statement made by him, whether sworn or unsworn, is not worthy of credit and his evidence cannot be regarded as being of any importance in the light of his previous contradictory statement unless he is able to give reasonable explanation. See: **Gyabaa v. The Republic [1984-86] 2GLR 461** and **Practice and Procedure in the Trial Courts of Ghana, second edition at page 159 by the learned Arthur S. A. Brobbey.**

Thus, PW1's evidence suggesting that the accused persons dragged him on the ground and pushed him into the car is not worthy of any credit particularly so as PW2 who supposedly witnessed the incident did not corroborate same. Furthermore if it was the case that the accused persons dragged him on the ground that fact would have been related to the police and same would have been captured in the particulars of offence in respect of count two. It is therefore not surprising that in count two, no details of the particular conduct of the accused persons constituting the alleged assault were stated.

Again PW1 testified that, "my wife opened the door and saw six accused persons standing at the door". Meanwhile, according to PW2, the wife of PW1, when she opened the door he saw five accused persons standing at the door. She further testified that "they got hold of him and put him into their vehicle driven by accused Yaw Preko who was then waiting in the car".

This also shows that PW1 was not truthful to the court when he stated that his wife saw six accused persons standing at his door. The evidence thus shows that A6 was all the while sitting in the car and was never at the door of the accused person and therefore even if there was any assault, A6 did not take part.

Again, it is the case of PW1 per paragraph 10 of his witness statement that after the accused persons put him in the car, they drove towards Kwahu Tafo direction to Abene so for fear of his life, he called the Kwahu Tafo Police and informed them about his arrest. During cross examination of PW1 however he changed the story and testified that it was his children who called the police. Below are the relevant excerpts of cross examination of PW1:

Q: If indeed the accused persons assaulted you, they would not have allowed you to place a call to the police station

A: It was my children who called the police while the accused persons were taking me to the chief. The police then mounted a barrier on the way

Q: I put it to you that at paragraph 10 of your witness statement, you stated that you were the one who called the Tafo Police on the way

A: I did not place a call when I was in the car

It is to be noted that the facts in support of the charge which is usually gathered from what the complainant made by the complainant and the outcome of investigation have it that for fear of his life, the complainant called the Kwahu Tafo police and informed them of his arrest. **The accused persons also testified that while on their way PW1 called the police.** PW1's change of story regarding the issue of the call to the police under cross examination only confirms the court's finding that PW1 is not a credible witness. It further shows that PW1's evidence that he called the police for fear of his life was to

exaggerate the events of the day to make his allegation of assault by the accused persons believable to the police because in my opinion if indeed PW1 had been assaulted by the accused persons as he alleges, they would not have permitted him to place a call to the police.

Moreover, A3 was part of the five accused persons that PW2 saw and therefore if he committed any acts of assault it should have been part of the same transaction involving the other accused persons. It therefore strikes me as weird that A3 will be singled out and separately charged with assault on count three in addition to count two which is also on assault involving all the accused persons. The reasonable inference is that, apart from A3 who allegedly held PW1's dress and pulled him into the car the others did not do anything to PW1.

It is also interesting to note that in **Exhibit G** which was also tendered by the defence as **Exhibit 1,** the endorsed medical form of PW1, the latter complained that he was "held" by six armed men. The doctor's observation was that on arrival, he was stable and not in any obvious respiratory distress, no bruises, lacerations or abrasions on any part of the body however the victim complained of left flank pain after presumably being forcefully held. Exhibit G therefore rules out any pulling or dragging of PW1 on the ground as he alleged under cross examination.

It is conceded that assault within the meaning of the law need not be accompanied by aggression. The least touch of a person, provided the other ingredients are present, can constitute assault. Here, assuming without admitting that the accused persons particularly A3, touched PW1, then it is important to determine what the intention of the touch was. The general principle of our law is that intention, like many other states of mind, is incapable of direct proof; it is always inferred from

proven facts. This is a principle of English common Law which has been accepted as an important principle of our criminal law.

See: **Bruce v Commissioner of Police [1963] 1GLR**

State v. Baba Gariba [1963] GLR

From all the circumstances of the case it is my view that the intention of the accused persons was not to cause harm, pain fear or annoyance or to excite him to anger but rather assist him get into the car because from the evidence, the accused persons demonstrated that they were there only to invite him and nothing more and they were indeed patient with PW1 and waited for him for about 30 minutes as admitted by him, to prepare before joining them to go. There is also no evidence of any resistance on the part of PW1 to have warranted him to be forced into the vehicle by means of assault.

Counsel for the accused persons in his address filed on the 14th of March 2023, after discussing the charge of assault and Exhibit G submitted that Exhibit G goes to buttress their argument that PW1 was bent on exaggerating his case in an attempt to get the accused persons convicted at all cost. I wholly agree with counsel for the accused persons based on the evidence adduced.

From the foregoing therefore, it is my view that the prosecution failed to prove beyond reasonable doubt that the accused persons assaulted PW1 within the meaning of the law. Counts two and count three also fail.

Count four is in respect of A1 and A2. They are charged under section 11 (a) of the Arms and ammunitions Act which provides that:

"where any fire arm, arms of war, ammunition of war or ammunition are without the proper authority

(a) Found in the possession of a person

(b) Kept in a place other than a public ware house or

(c) Unlawfully kept in a private house,

That person or the occupier of the place or the owner of the place or any other person keeping them commits an offence unless that person, occupier or the owners can prove that they were deposited there without the knowledge or consent of that person, occupier or owner.

The ingredients the prosecution needs to prove to sustain a conviction on this charge are as follows:

1. The accused person must be in possession or control of the firearm or kept in a place other than a public warehouse or unlawfully kept in a private ware house:
2. The accused person had no lawful authority to possess the fire arm

Section 26(1) of NRCD 9 provides for the punishment for any contravention of the Act thus:

A person commits an offence and is liable on summary conviction to a fine not exceeding 1,000 penalty units or to a term of imprisonment not exceeding five years or to both the fine and imprisonment, if that person has in that person's possession, without lawful authority, a permit granted under this Act.

Section 29 of NRCD 9 defines "fire arms" to include a gun, rifle, machine fun, cap gun, air rifle or air pistol, revolver, pistol whether whole or in detached pieces.

In the instant case, the subject matter of the possession are guns which falls within the definition per section 29 above. The act however did not define possession and so I will

go by the ordinary English meaning of possession as given by the Oxford Advanced learner's dictionary, International Student's edition, 7th edition which is; "*the state of having or owning something or something that you own or have with you at a particular time*". From this definition it is clear that a person in possession of a fire must not necessarily be the owner. Thus, an owner or a person found in physical possession of any of the fire arms stated shall be culpable if they possess same without lawful authority.

Here, the prosecution' evidence per PW1 is that on the day in question, whilst he was asleep in his room at Mpem quarters with his wife, he heard a bang on his door. His wife went to open the door and saw the six accused persons standing at the door. They asked of him and when he came out, he saw the accused persons dressed in green uniforms with accused Boakye Gyan and Ernest Kumah each armed with a single barrel gun. This evidence was not corroborated by PW2 who first went to open the door and as I have established, PW1 is not a credible witness whose evidence ought to be relied on by the court. However with regards to this particular charge, the court cannot gloss over Exhibit A and Exhibit B, the cautioned statements of A1 and A2 respectively which they voluntarily gave to the police in the presence of an independent witness on the day of the incident upon their arrest. In Exhibit A, A1 stated that; *"... Today 19/02/22 at about 7:15 am, myself, Osei Emmanuel, Evans Asirifi, Ernest Kumah, Yaw Preko and Kofi Sarpog on board Mitsibushi Pajero car with the registration No. GR 7222 – N, driven by Yaw Preko and two single barrel guns with 26 AA and BB life [sic] ammunitions, proceeded to Apam Quarters to arrest Mr Nartey and put him into our car heading towards Abetifi. That on reaching Kwahu Tafo we were arrested by the police. The gun I was holding belongs to one Nana Baah of Abene. He gave the gun to me which I always used for our operations. The gun was in my care. There are valid documents covering the gun hence my statement"*

A2 also stated as follows in his cautioned statement Exhibit B:

"...That on our way, we were arrested by the Kwahu Tafo police. I was holding a single barrel gun belonging to my late father. Actually I don't have any valid documents covering the gun. We were [sic] 26 AA and BB life [sic] ammunitions on us when we were arrested. It was our leader who provide [sic] us with the ammunitions...".

The above statements by A1 and A2 in my view are in no uncertain terms confession statements by them. A confession statement was defined by Akamba JSC in the case of **Ekow Russell v. The Republic [2017-2020] SCGLR 469** which was cited with approval in the case of **Authur v. The Republic [2021] GHASC 100** as:

A confession statement is an acknowledgement in express words, by which the accused in a criminal charge, of the truth of the main fact charged or of some essential part of it. By its nature, such statement if voluntarily given by an accused person himself, offers the most reliable piece of evidence upon which to convict the accused. It is for this reason that safeguards have been put in place to ensure that what is given as a confession is voluntary and of the accused person's own free will without any fear, intimidation, coercion, promises or favours.

There is no evidence that the said statements were not voluntarily given and so as confession statements the court can safely rely on same to convict A1 and A2 on count four if no reasonable defence is offered by them.

In his defence, A1 stated that he did not have a gun when they went to the complainant's house. When they were arrested, the police picked up the gun from the Mitsubishi Pajero belonging to Nana Kwadwo Baah of Abene. This statement by the accused is contradictory to his statement in Exhibit A so that even if the court accepts that he did not carry the gun with him when he went to PW1's door, it is certain from Exhibit A that he was in possession of same and left it in the car and therefore he had control over it.

The position of the law as espoused in **Buor v. The state [1965] GLR, 1 SC,** is that:

"if a witness has previously said or written something contrary to what he had testified at the trial his evidence should not be given much weight"

In the instant case, I am inclined not to give any weight to the evidence of A1 as it is obvious that A1's evidence in court is an afterthought and does not represent the truth. I therefore hold that A1 was in possession and control of a single barrel gun on the date of the incident.

A2 on the other hand said nothing about this charge in his evidence in chief. It can thus be inferred that he had no defence to the charge thus confirming the statement he gave to the police as per **Exhibit B.**

In respect of this charge, that is, count four, Counsel for the accused persons in his address submitted that it is the case of A1 and A2 that the gun was found in the vehicle by the police officers and did not take the gun to the complainant's house and that DW1 who is the owner of the gun and had license testified that he used the vehicle a day before the accused persons used the car for their operation. It is important to note that counsel's submission was in respect of a gun, specifically the one belonging to DW1 and not the other one found in possession of A2.

Indeed DW1 in his evidence in chief tendered **Exhibit 2** which is a permit showing that a gun was transferred to him and he had been granted permit to possess same. As to whether the said permit is indeed in respect of the particular gun that was found on A1, it was never a subject of contention and so prima facie I accept that DW1 has authority to possess the said gun but the question is, what about A1?. It is DW1's case that he used the said vehicle on the 17th of February, 2022 for palace errands and left the gun in it. Granted that DW1 forgot to take the gun from his car after using it, it is my respectful view that from the vivid explanation given by A1 as captured in Exhibit A as to how he came in possession of the gun, it can only be inferred that A1 possessed the gun without

DW1's consent. Before this court, A1 and A2 have not demonstrated that they had lawful authority to possess the guns retrieved from them on the material date.

On the totality of the evidence therefore, it is my view that A1 and A2 failed to raise a doubt in the case of the prosecution in respect of count four. I therefore conclude that the prosecution was able to discharge its burden in proving the guilt of A1 and A2 on count four beyond a reasonable doubt.

As already established the prosecution was unable to prove counts one and two against all the accused persons. Consequently, all the accused persons are acquitted and discharged on counts one and two. Again the prosecution failed to prove count three against A3. He is therefore acquitted and discharged on count three. A1 and A2 are however pronounced guilty and convicted on count 4.

SENTENCING

In sentencing A1 and A2, I have taken into account their pleas in mitigation, the fact that they are first time offenders and all the circumstances of the case. A1 and A2 are each sentenced to a fine of 400 penalty units in default 12 months imprisonment.

FINAL ORDERS

It hereby ordered that the gun which was retrieved from A1 and which belongs Nana Kwadwo Baah for which he has produced his permit be released to him. Thebe released to him. The other gun which was retrieved from A2 for which he has no permit shall be retained by the police.

H/H ADWOA AKYAAMAA OFOSU (MRS)

CIRCUIT COURT JUDGES